



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R04-RCRA-2018-0528; FRL- 9985-93-Region 4]

Mississippi: Proposed Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Mississippi has applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. EPA has reviewed Mississippi's application and is proposing to determine that these changes satisfy all requirements needed to qualify for final authorization. Therefore, we are proposing to authorize the State's changes. EPA seeks public comment prior to taking final action.

DATES: Comments must be received on or before *[INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-RCRA-2018-0528, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. EPA may

publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Leah Davis, Materials and Waste Management Branch, RCR Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960; telephone number: (404) 562-8562; fax number: (404) 562-9964; e-mail address: *davis.leah@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to

EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

New federal requirements and prohibitions imposed by federal regulations that EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time that they take effect in unauthorized states. Thus, EPA will implement those requirements and prohibitions in the states, including the issuance of new permits implementing those requirements, until the states are granted authorization to do so.

B. What decisions is EPA proposing to make in this rule?

Mississippi submitted program revision applications, dated September 10, 2014 and June 1, 2018, seeking authorization of changes to its hazardous waste program that correspond to certain federal rules promulgated between July 1, 2004 and June 30, 2014 (including RCRA Clusters¹ XV through XXIII). EPA concludes that Mississippi's applications to revise its authorized program meet all of the statutory and regulatory requirements established by RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, EPA proposes to grant Mississippi final authorization to operate its hazardous waste program with the changes described in its authorization applications, and as outlined below in Section F of this document.

Mississippi has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program applications, subject to the limitations of HSWA, as

¹ A "cluster" is a grouping of hazardous waste rules that EPA promulgates from July 1st of one year to June 30th of the following year.

discussed above.

C. What is the effect of this proposed authorization decision?

If Mississippi is authorized for the changes described in Mississippi's authorization applications, these changes will become part of the authorized State hazardous waste program, and therefore will be federally enforceable. Mississippi will continue to have primary enforcement authority and responsibility for its State hazardous waste program. EPA would retain its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations for which EPA is proposing to authorize Mississippi are already effective, and are not changed by today's proposed action.

D. What happens if EPA receives comments that oppose this action?

EPA will evaluate any comments received on this proposed action and will make a final decision on approval or disapproval of Mississippi's proposed authorization. Our decision will be published in the *Federal Register*. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What has Mississippi previously been authorized for?

Mississippi initially received final authorization on June 13, 1984, effective June 27, 1984 (49 FR 24377), to implement the RCRA hazardous waste management program. EPA granted authorization for changes to Mississippi's program on August 17, 1988, effective October 17, 1988 (53 FR 31000); August 10, 1990, effective October 9, 1990 (55 FR 32624); March 29, 1991, effective May 28, 1991 (56 FR 13079); June 26, 1991, effective August 27, 1991 (56 FR 29589); May 11, 1992, effective July 10, 1992 (57 FR 20056); April 8, 1993, effective June 7, 1993 (58 FR 18162); October 20, 1993, effective December 20, 1993 (58 FR 54044); March 18, 1994, effective May 17, 1994 (59 FR 12857); June 1, 1995, effective July 31, 1995 (60 FR 28539); August 30, 1995, effective October 30, 1995 (60 FR 5718); February 23, 2005, effective April 25, 2005 (70 FR 8731); and August 4, 2008, effective October 3, 2008 (73 FR 45170).

F. What changes are we proposing with today's action?

Mississippi submitted program revision applications, dated September 10, 2014 and June 1, 2018, seeking authorization of changes to its hazardous waste management program in accordance with 40 CFR 271.21. The September 10, 2014 application included changes associated with Checklists² 206.1, 207.1, 208-215, 217-218, 220, 222-223, and 225-228. All of these Checklists were resubmitted with Mississippi's June 1, 2018 application in response to prior EPA comments. The June 1, 2018 application also included changes associated with Checklists 229-232, as well as the non-checklist technical correction published at 72 FR 35666

² A "checklist" is developed by EPA for each federal rule amending the RCRA regulations. The checklists document the changes made by each federal rule and are presented and numbered in chronological order by date of promulgation.

(June 29, 2007). EPA proposes to determine, subject to receipt of written comments that oppose this action, that Mississippi's hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. Therefore, EPA is proposing to authorize Mississippi for the following program changes:

Description of Federal Requirement	<u>Federal Register</u> Date and Page	Analogous State Authority³
Checklist 206.1, Nonwastewaters from Dyes and Pigments (Correction)	70 FR 35032 6/16/05	R. 1.2
Checklist 207.1, Uniform Hazardous Waste Manifest Rule (Correction)	70 FR 35034 6/16/05	R. 1.3, 1.7, and 1.11
Checklist 208, Methods Innovation Rule and SW-846 Final Update IIIB	70 FR 34538 6/14/05 70 FR 44150 8/1/05	R. 1.1, 1.2, 1.7, 1.11, 1.13, 1.15, 1.16, and 1.22
Checklist 209, Universal Waste Rule: Specific Provisions for Mercury Containing Equipment	70 FR 45508 8/5/05	R. 1.1, 1.2, 1.7, 1.11, 1.15, 1.16, and 1.21
Checklist 210, Standardized Permit for RCRA Hazardous Waste Management Facilities	70 FR 53420 9/8/05	R. 1.1, 1.2, 1.14, 1.16, and 1.23
Checklist 211, Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures ("Headworks exemptions")	70 FR 57769 10/4/05	R. 1.2
Checklist 212, NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II)	70 FR 59402 10/12/05	R. 1.1, 1.7, 1.11, 1.13, and 1.16

Checklist 213 ⁴ , Burden Reduction Initiative	71 FR 16862 4/4/06	R. 1.1, 1.2, 1.7, 1.11, 1.13, 1.15, and 1.16
Checklist 214, Corrections to Errors in the Code of Federal Regulations	71 FR 40254 7/14/06	R. 1.1, 1.2, 1.3, 1.7, 1.11, 1.13, 1.14, 1.15, 1.16, 1.21, and 1.22
Checklist 215, Cathode Ray Tubes (CRT) Rule	71 FR 42928 7/28/06	R. 1.1 and 1.2
Checklist 217, NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) Amendments	73 FR 18970 4/8/08	R. 1.7 and 1.13
Checklist 218, F019 Exemption for Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes	73 FR 31756 6/4/08	R. 1.2
Checklist 220, Academic Laboratories Generator Standards	73 FR 72912 12/1/08	R. 1.2 and 1.3
Checklist 222, OECD Requirements; Export Shipment of Spent Lead-Acid Batteries	75 FR 1236 1/8/10	R. 1.3, 1.5, 1.7, 1.11, and 1.13
Checklist 223, Hazardous Waste Technical Corrections and Clarifications	75 FR 12989 3/18/10 75 FR 31716 6/4/10	R. 1.1, 1.2, 1.3, 1.5, 1.7, 1.11, 1.13, 1.15, and 1.16
Checklist 225, Removal of Saccharin and its Salts from the Lists of Hazardous Constituents	75 FR 78918 12/17/10	R. 1.2 and 1.15
Checklist 226: Academic Laboratories Generator Standards Technical Corrections	75 FR 79304 12/20/10	R. 1.3
Checklist 227, Revision of the Land Disposal Treatment Standards for Carbamate Wastes	76 FR 34147 6/13/11	R. 1.15
Checklist 228, Hazardous Waste Technical Corrections and Clarifications	77 FR 22229 4/13/12	R. 1.2 and 1.13
Checklist 229, Conditional Exclusions for Solvent Contaminated Wipes	78 FR 46448 7/31/13	R. 1.1 and 1.2

Checklist 230, Conditional Exclusions for Carbon Dioxide (CO ₂) Streams in Geologic Sequestration Activities	79 FR 350 1/3/14	R. 1.1 and 1.2
Checklist 231, Hazardous Waste Electronic Manifest Rule	79 FR 7518 2/7/14	R. 1.1, 1.3, 1.5, 1.7, and 1.11
Checklist 232, Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule	79 FR 36220 6/26/14	R. 1.1 and 1.2
Non-Checklist Item Technical Correction	72 FR 35666 6/29/07	R. 1.21

³ The Mississippi regulatory provisions are from the Mississippi Hazardous Waste Regulations, Title 11, Part 3, Chapter 1, effective November 17, 2017.

⁴ The National Environmental Performance Track Program referenced in the Burden Reduction Initiative Rule has been discontinued.

G. Where are the revised State rules different from the federal rules?

When revised state rules differ from the federal rules in the RCRA state authorization process, EPA determines whether the state rules are equivalent to, more stringent than, or broader in scope than the federal program. Pursuant to Section 3009 of RCRA, 42 U.S.C. 6929, state programs may contain requirements that are more stringent than the federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable. Although the statute does not prevent states from adopting regulations that are broader in scope than the federal program, such regulations cannot be authorized and are not federally enforceable. In its review of the Mississippi regulations submitted as part of the program revision applications that are the subject of this proposed rule, EPA did not find any State regulations to be more stringent or broader in scope than the federal program.

EPA cannot delegate certain federal requirements associated with the manifest registry system in the Uniform Hazardous Waste Manifest Rule (Checklist 207) or the operation of the electronic manifest system in the Hazardous Waste Electronic Manifest Rule (Checklist 231).

Mississippi has adopted these requirements and appropriately preserved EPA's authority to implement them (see 11 Miss. Admin. Code Pt. 3, Ch. 1, Rules 1.1, 1.3, 1.5, 1.7, and 1.11).

EPA also cannot delegate the federal requirements associated with international shipments (i.e., import and export provisions) associated with the Cathode Ray Tubes Rule (Checklists 215 and 232) and the OECD Requirements for Export Shipments of Spent Lead-Acid Batteries (Checklist 222). Mississippi has adopted these requirements and appropriately preserved EPA's authority to implement them (see 11 Miss. Admin. Code Pt. 3, Ch. 1, Rules 1.1, 1.2, and 1.3).

H. Who handles permits after the final authorization takes effect?

Mississippi will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which EPA issued prior to the effective date of authorization until they expire or are terminated. EPA will not issue any new permits or new portions of permits for the provisions listed in the Table above after the effective date of the final authorization. EPA will continue to implement and issue permits for HSWA requirements for which Mississippi is not yet authorized.

I. How does today's proposed action affect Indian country (18 U.S.C. 1151) in Mississippi?

Mississippi is not authorized to carry out its hazardous waste program in Indian country within the State, which includes the Mississippi Band of Choctaw Indians. Therefore, this proposed action has no effect on Indian Country. EPA will continue to implement and administer

the RCRA program on these lands.

J. What is codification and will EPA codify Mississippi's hazardous waste program as proposed in this rule?

Codification is the process of placing the state's statutes and regulations that comprise the state's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by referencing the authorized state rules in 40 CFR part 272. EPA is not proposing to codify the authorization of Mississippi's changes at this time. However, EPA reserves the amendment of 40 CFR part 272, subpart Z, for the authorization of Mississippi's program changes at a later date.

K. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action proposes to authorize State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as today's proposed authorization of Mississippi's revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action proposes to authorize pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C.

1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to authorize State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a state’s application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in proposing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of

this action in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this action proposes authorization of pre-existing State rules which are at least equivalent to, and no less stringent than existing federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this proposed rule is not subject to Executive Order 12898.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: September 27, 2018.

Onis "Trey" Glenn, III,
Regional Administrator, Region 4.

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